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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91184529
Party	Defendant Global Tissue Group, Inc.
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Date	12/09/2010
Attachments	Applicant's Opposition to Opposers Motion.pdf (36 pages)(1588665 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GEORGIA-PACIFIC CONSUMER PRODUCTS LP, Opposer, v. GLOBAL TISSUE GROUP, INC. Applicant.	)	Opposition No.: 91184529

APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO REOPEN TIME FOR EXPERT DISCLOSURES AND FOR LEAVE TO PRESENT EXPERT TESTIMONY ON APPLICANT'S COUNTERCLAIMS

Applicant Global Tissue Group ("Global Tissue") hereby submits this Opposition paper in response to Opposer Georgia-Pacific Consumer Products LP's ("Georgia-Pacific") Motion to Reopen Time for Expert Disclosures and for Leave to Present Expert Testimony on Applicant's Counterclaims.

I. BACKGROUND

In its Order of September 9, 2009, the TTAB reset the schedule for this proceeding, including an expert disclosure deadline of November 2, 2009 and a discovery deadline of December 2, 2009. Global Tissue's new counsel, Hoffmann & Baron, LLP, filed a Notice of Appearance in this proceeding on November 3, 2009. The parties were unable to reach agreement during this final month of the scheduled discovery period, thus requiring Global Tissue to file a Motion to Compel, such Motion being filed on November 25, 2009. That same day, Applicant also filed a Motion for Leave to Amend its Answer to add counterclaims.

In its Order of March 25, 2010, the TTAB 1) granted Applicant's Motion to Amend its Answer to add counterclaims; 2) directed Opposer to produce a 30(b)(6) witness; 3)

directed Opposer to produce a requested search report; and 4) reset the schedule to extend discovery until May 28, 2010. Inasmuch as the deadline for filing expert disclosures had already passed prior to the filing of Applicant's motions on November 25, 2009, and inasmuch as neither party had requested an extension of such dates, the TTAB did not reopen the period for expert testimony in the schedule set forth in its Order of March 25, 2010.

Global Tissue's Amended Answer and Counterclaims were filed on April 23, 2010. The ordered 30(b)(6) deposition of Georgia-Pacific was taken on April 28, 2010. However, because the designated 30(b)(6) witness was unable to answer questions in many of the identified categories of topics, and because the parties were unable to agree to any follow-up discovery, Applicant was again required to file a Motion to Compel seeking the information to which it was entitled. This second Motion to Compel was filed on May 27, 2010, prior to the close of the discovery period set in the Order of March 25, 2010.

In its Order dated October 6, 2010, the TTAB directed Georgia-Pacific to provide additional 30(b)(6) witnesses to address the areas in which the prior 30(b)(6) witness had lacked knowledge. The TTAB again reset the schedule, extending the discovery deadline to November 24, 2010. The follow-up 30(b)(6) depositions were conducted on November 8-9, 2010. This completed Applicant's discovery.

On November 18, 2010, six days before the close of discovery, Global Tissue was advised by email (Exhibit 1) that Georgia-Pacific had prepared an expert report, and would be requesting leave to reopen the time for expert disclosures and to present expert testimony on Applicant's counterclaims. Georgia-Pacific indicated that it would make its expert available for a deposition. On November 19, 2010, Global Tissue advised Georgia-Pacific by letter (Exhibit 2) that the deadline for filing expert testimony in this proceeding had long expired, that it would not consent to the introduction of expert disclosures at this late point in the proceeding, and that it would oppose any motion filed by Georgia-Pacific in this regard. On November 19, 2010, Georgia-Pacific provided Global Tissue with a

copy of its expert report (Exhibit 3), and filed its Motion for a Leave to Reopen Time for Expert Disclosures.

On November 24, 2010, the last day of discovery, Georgia-Pacific provided Global Tissue by email (Exhibit 4) with 174 pages of additional documents, including a 160 report dated February 2009. Georgia-Pacific also advised Global Tissue that it would be forwarding CDs containing documents from its TTAB proceeding with Kimberly-Clark. On November 29, after the close of discovery, and without a Certificate of Service, Global Tissue received two CDs containing 29,000 pages of unindexed and uncategorized documents (Exhibit 5). By letter dated December 2, 2010 (Exhibit 6), Global Tissue objected to the late production of these documents and advised Georgia-Pacific that it would be filing a Motion to Exclude such documents. Georgia-Pacific responded by letter dated December 8 (Exhibit 7) arguing that this last minute production of documents was merely "supplemental discovery" allowed under the Federal Rules of Civil Procedure. Global Tissue will address this late document production in its separately-filed Motion to Exclude.

II. ARGUMENT

A. INTRODUCTION

From the beginning of this proceeding it has been Georgia-Pacific's strategy to outspend Global Tissue in an effort to force Global Tissue to abandon its pending application. This strategy has included an original "document dump" of 32,000 pages, as well as a reluctance/refusal to cooperate with Global Tissue in response to its discovery requests. As a result, each time that Georgia-Pacific refused to provide discoverable material, Global Tissue has been required to spend money seeking and obtaining relief from this Board. The initial document production of 32,000 pages, which occurred in June of 2009, required Global Tissue to expend significant time and money in reviewing and analyzing what were eventually determined to be mostly irrelevant documents. Because Georgia-Pacific failed to produce relevant documents clearly within its possession, Global

Tissue was then required to expend additional time and money identifying and locating material from other Georgia-Pacific litigations and proceedings, as well as material from the marketplace.

There can be no doubt but that Georgia-Pacific expected Global Tissue to abandon its application due to the cost of this proceeding. When it did not do so, and now faced with the upcoming testimony period, it is clear that Georgia-Pacific finally realized that it needed to "shore up" its own case in an effort to sustain this Opposition. Accordingly, it provided Global Tissue with 1) an expert report six days before the close of discovery, 2) 174 pages of additional documents on the close of discovery, including a 160 page report dated February 2009 and 3) two CDs containing 29,000 pages of unindexed and uncategorized documents after the close of discovery.

This last minute attempt to enter expert testimony into this proceeding, as well as the production of documents on the last day of discovery and after the close of discovery, did not result from any "excusable neglect" on the part of Georgia-Pacific, but rather resulted from its own litigation strategy in this proceeding. This last minute discovery production was not done in good faith, and should not be allowed entry into this proceeding.

More to the point, Global Tissue has concluded all of its discovery, and from the beginning has based its strategy on the premise that expert testimony would not be part of this proceeding. To allow introduction of expert testimony at this late point in the proceeding would be extremely prejudicial to Global Tissue, and would reward Georgia-Pacific for its bad faith litigation strategy.

B. GEORGIA-PACIFIC ACTED WITH "NEGLECT"

Georgia-Pacific's argues that it did not act with "neglect" because "for all practical purposes, discovery as to the counterclaims did not open until October 6, 2010." This statement is not only wrong, but is extremely misleading. Georgia-Pacific has been aware

of the counterclaims since November 25, 2009, the day that Applicant's Motion for Leave to Amend was originally filed. As Georgia-Pacific is well aware, this motion included a draft of the proposed counterclaims. This Motion was subsequently granted in the Board's Order of March 25, 2010. Although Georgia-Pacific conveniently ignores this March 25, 2010 date throughout its entire paper, this is the critical date for purposes of this Motion. In particular, in the March 25, 2010 Order, the Board reset the schedule in this proceeding by extending discovery until May 28, 2010, but did **not** reopen the period for expert testimony. Thus, as of March 25, 2010, Georgia-Pacific was aware that the counterclaims would be entered into this proceeding, and was aware that the time for expert disclosures had **not** been reopened.

The point in time to have made the present request to the Board was March 25, 2010 – upon receipt of the Board's Order and prior to Global Tissue completing its discovery. Instead, Georgia-Pacific waited almost eight months to notify Global Tissue of its intent to introduce expert testimony into this proceeding. What is even more outrageous is that by Georgia-Pacific's own admission, its expert conducted the survey in question during the month of October, yet they still waited until November 18, 2010 to bring this issue to the attention of Global Tissue.

In its moving paper, Georgia-Pacific cites the following language from the federal regulations:

> The Office recognizes that there may be cases in which a party may not decide that it needs to present an expert witness at trail until after the deadline for expert disclosure. In such cases, disclosure must be made promptly when the expert is retained and a motion for leave to present testimony by the expert must be filed...The Board will decide on a case-by-case basis how to handle a party's late identification of experts.

Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 147, 42246 (Aug. 1, 2007) (to be codified at 37 C.F.R. pt. 2). Georgia-Pacific's citation to the above language is curious since that same citation specifically states that "disclosure must be made **promptly** when the expert is **retained**...". By its own admission, its expert was

retained in early October, yet disclosure was not made until late November. A two month delay is clearly not prompt.

In sum, rather than now blame the Board for failing to reset the time for expert disclosures, Georgia-Pacific should have made its request back in March of 2010 if it actually believed that expert testimony was necessary to defend the counterclaims. This realization did not suddenly materialize in October 2010, but rather was part of Georgia-Pacific's overall bad faith litigation strategy.

C. GEORGIA-PACIFIC HAS NOT DEMONSTRATED THAT IT ACTED WITH "EXCUSABLE NEGLECT"

As Georgia-Pacific properly notes in its moving paper, with respect to a motion to reopen an expired deadline, "[t]he movant must show that its failure to act during the time previously allotted therefor was the result of excusable neglect." T.M.B.P.§509.01(b)(1) (citing Fed. R. Civ. P. 6(b)). The standard for "excusable neglect" was set forth in *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 395 (1993), and was adopted by this Board in *Pumpkin Ltd. v. The Seed Corps,* 43 U.S.P.Q.2d 1582, 1585 (T.T.A.B. 1997).

Georgia-Pacific's argument that it has satisfied the requirements of *Pioneer* are at least creative, if nothing else. First, it argues that because there has been no "neglect," its delay certainly must be excusable. As discussed hereinabove, Georgia-Pacific's failure to take any action with respect to expert testimony for almost eight months from the critical date, together with its failure to advise Global Tissue and this Board of its intention to do so until two months after actually retaining such an expert, constitutes 100% neglect.

Next, Georgia-Pacific's repeated reference to having made its expert disclosure within the "49-day fact discovery period concerning the counterclaims" is based on the disingenuous premise that it could not have taken any action until the Board's Order of October 6, 2010. Of course, this argument ignores the fact that the critical date in this proceeding is March 25, 2010, as well as the fact that Georgia-Pacific could have brought

this issue to the attention of the Board and to Global Tissue any time during the last period of suspension.

Notwithstanding the foregoing, Global Tissue made a strategic decision to attempt to win this proceeding by outspending Global Tissue, and when that strategy backfired, realized that it had not properly produced the material it needed to rely upon to support its case. Thus, at the last minute it retained an expert, and decided to produce over 29,000 pages of documents to Global Tissue after the close of discovery. The Court in *Pioneer* set forth a four step test for addressing the issue of excusable neglect when considering a motion brought under FRCP 6(b). These steps include:

> (1) the danger of prejudice to the non-movant, (2) the length of the delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith.

Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380, 395 (1993). As discussed in detail hereinbelow, Georgia-Pacific has failed to demonstrate that it acted with excusable neglect.

1. Global Tissue would Suffer Prejudice from the Introduction of Expert Testimony

There can be no doubt but that Global Tissue would suffer prejudice if expert testimony is introduced into the proceeding at this late point in time. More particularly, Global Tissue has concluded its discovery, after expending a great amount of time, effort and cost in collecting the information required to defend this Opposition and to support its counterclaims. It has operated for the last year under the premise that expert testimony would not be part of this proceeding. Its strategy for taking and completing this discovery was based upon this premise. To allow introduction of expert testimony at this point in the proceeding would not only require Global Tissue to retain its own expert, but to reconsider and potentially follow-up on the discovery already conducted in this proceeding.

It support of its argument that there is no prejudice to Global Tissue, Georgia-Pacific relies upon and cites two non-precedential decisions of the TTAB, namely *Champagne Louis Roederer v. J. Garcia Carrion*, S.A., No. 9115505, 2004 WL 839411, *4 (T.T.A.B. Apr. 15, 2004) and *Intershop Software Entwicklungs GMBH*, No. 92041191, 2004 WL 1772118, *3 (T.T.A.B. Aug. 3, 2004). In addition to the fact that both cases are clearly identified as not being citable as precedent of the T.T.A.B., the facts of each case are clearly distinct from the facts at hand. For example, the *Champagne* case, among other things, considered a Motion filed by the Applicant to enlarge its time in which to respond to Opposer's discovery requests. This is quite different than the Opposer requesting the introduction of expert testimony at the conclusion of the discovery period, having known for almost eight months that this time had expired. Next, the *Intershop Software* decision dealt with a case wherein the Applicant failed to respond to a Motion for Summary Judgment, and moved to reopen the time for responding to such motion. Again, these facts are quite distinct from the facts at hand.

Next, at page 6 of Georgia-Pacific's moving paper, it cites a portion of the *Pumpkin* decision allegedly appearing at page 1587 and dealing with prejudice. However, no such language can be found anywhere in the *Pumpkin* decision. It is unclear where this language comes from.

Georgia-Pacific's final argument that no prejudice exists because "Global Tissue had equal opportunity to obtain its own expert and now has the opportunity to depose Georgia-Pacific's expert" is simply ludicrous. Both parties had the opportunity to retain experts prior to the original November 2, 2009 deadline. Neither party chose to do so. To allows Georgia-Pacific to introduce expert testimony at this late point in the proceeding would be extremely prejudicial to Global Tissue.

Accordingly, this first *Pioneer* factor weighs against a finding of excusable neglect.

2. The Introduction of Expert Testimony will Significantly Delay this Proceeding, and Strain the Resources of the Board

Georgia-Pacific argues that it "acted swiftly to file its motion to reopen as soon as its survey was complete, avoiding any unnecessary delay". Thus, by its own admission, Georgia-Pacific did not take action until its "survey was complete". It is difficult to understand how Georgia-Pacific "acted swiftly" when at the minimum, it intentionally delayed this request for at least two months while its expert conducted his survey, tabulated the results, and finalized the report.

However, as discussed hereinabove, the length of the delay is actually almost eight months. By Order dated March 25, 2010, the TTAB granted Applicant's request to file its amended answer and counterclaims. It was at this point that Georgia-Pacific should have made this Motion, and sought this relief. Instead, it argues that it somehow did not realize its need for expert testimony until the beginning of October 2010. This argument is simply not credible.

More to the point, the introduction of expert testimony at this late point in the proceeding will have a negative impact on this judicial proceeding, and will clearly strain the Board's limited resources. There can be no doubt but that the introduction of expert testimony at this point in the proceeding will lead to additional discovery motions, as well as the need to undertake follow-up discovery and/or to supplement discovery already taken in this proceeding. Georgia-Pacific's reliance upon the *Champagne* and *Intershop Software* decisions in this regard is misplaced.

Accordingly, this second *Pioneer* factor weighs against a finding of excusable neglect.

3. The Delay was Caused by Georgia-Pacific's Aggressive Litigation Strategy, and was Clearly Within the Reasonable Control of Georgia-Pacific

Georgia-Pacific begins its discussion of the third *Pioneer* factor by misquoting the non-precedential Stathopoulos decision. More particularly, Georgia-Pacific cites this decision as standing for the proposition that the third *Pioneer* factor **is** considered by the Board to be the most important factor – rather than the actual language of the decision which states that the third *Pioneer* factor "might be considered the most important factor." In any event, this factor weighs heavily against a finding of excusable neglect.

Georgia-Pacific again refers to the "short (49-day) fact discovery period that did not include a separate expert disclosure deadline". As already discussed, this argument is both intentionally misleading and incorrect. Georgia-Pacific calculates this alleged "49-day period" by considering only the time following the Board's Order of October 6, 2010. What it conveniently fails to mention is that Leave to File the Amended Answer and Counterclaims was granted in the Board's Order of March 25, 2010. Thus, rather than the "49-day" period repeatedly referenced in Georgia-Pacific's moving papers, it in fact had almost eight months to bring this issue to the attention of the Board.

Next, Georgia-Pacific's statement that the short 49-day fact discovery period "did not include a separate expert disclosure deadline" is also intentionally misleading. The simple reason why the Order of October 6, 2010 did not include an expert disclosure deadline is because that deadline had long ago expired on November 2, 2009.

The next argument by Georgia-Pacific that "the parties thus reasonably proceeded on the assumption that the close of fact discovery – under these unique circumstances was a *de facto* expert disclosure deadline as well" borders on the incredulous. Neither party proceeded in this manner. More to the point, there was clearly no such assumption made by Global Tissue, and in fact Global Tissue has been operating based on the exact opposite assumption, namely that the deadline for expert disclosures had long expired, and that expert testimony would not be part of this proceeding.

Georgia-Pacific next argues that it was not until Global Tissue asserted its counterclaims that it determined it necessary to introduce expert survey evidence proving secondary meaning and acquired distinctiveness of the family of quilted marks. This argument is simply not understood. To begin, by Georgia-Pacific's own admission they realized that expert survey evidence was necessary when Global Tissue asserted its counterclaims. Georgia-Pacific had a draft of such counterclaims since November 25, 2009, and was aware as of March 25, 2010 that such counterclaims would be asserted. Next, Georgia-Pacific argues that this opposition includes three marks in its family of quilted trademarks which are uncontestable – which means it acknowledges that the remaining remarks in this proceeding are not incontestable. Accordingly, it is unclear why Georgia-Pacific would not have been providing evidence as to the secondary meaning and acquired distinctiveness of these other marks – whether or not the counterclaims were ever made part of this proceeding.

It should also be kept in mind that affirmative defenses were already part of this proceeding, and Georgia-Pacific would have been required to provide such evidence to successfully sustain this opposition, with or without the counterclaims. Notwithstanding the foregoing, as of March 25, 2010, Georgia-Pacific was aware that counterclaims were now part of this proceeding, and could have and should have brought this issue to the Board's attention at that point in time. If they had done so, this matter could have been addressed prior to Global Tissue completing its discovery.

Even more to the point, Georgia-Pacific has offered no explanation as to why this issue was not brought to the attention of the Board and Global Tissue as soon as its expert was retained. By its own admission, the survey in question was conducted during the month of October. We do not know when Georgia-Pacific's expert was actually retained, but it was at least as early as the beginning of October. Even if Georgia-Pacific only made its decision to retain an expert in early October, there is absolutely no justification for not raising this issue at that point – rather than two months later and six days before the close of discovery.

It is clear that Georgia-Pacific's failure to do so was part of its overall aggressive litigation strategy, and it should not now be rewarded for failing to follow the discovery rules. Finally, Georgia-Pacific argues that failure to allow Georgia-Pacific to offer expert testimony "would be substantially prejudicial to Georgia-Pacific and would constitute reversible error". This statement is without any support and/or justification. If there is legal support for such a position, Georgia-Pacific should provide it. Otherwise, this argument constitutes nothing more than an attempt to "scare" this Board into granting Georgia-Pacific's Motion.

4. Georgia-Pacific has Acted in Bad Faith Throughout this Entire Proceeding

The firm of Hoffmann & Baron has been involved in this proceeding since November 3, 2009. Over this time, the litigation strategy of Georgia-Pacific has been made clear, including the initial "document dump" of 32,000 pages of mostly irrelevant documents, the need to file Motions to Compel to obtain requested discovery material and to take properly noticed depositions, the sudden discovery of hundreds of pages of search reports just prior to the discovery deposition of in-house counsel for Georgia-Pacific[1], and the most recent document production discussed further hereinbelow, and which is the subject of a separate Motion to Exclude.

More particularly, on November 24, 2010, the last day of discovery, Georgia-Pacific forwarded by email an additional 174 pages of documents, including a 160 page report dated February 2009. Georgia-Pacific also advised Global Tissue on the last day of discovery that it would be forwarding CDs containing a copy of Georgia-Pacific's document production in its TTAB matter with Kimberly-Clark. On Monday, November 29, after the close of discovery Global Tissue received two CDs containing 29,000 pages of unindexed and uncategorized documents. Although Georgia-Pacific suggests that this was merely supplemental production, it is hard to imagine that 29,000 pages of additional

[1] Despite repeatedly denying the existence of any search reports for over two years and throughout the prior motion practice before this Board, hundreds of pages of search reports were "suddenly" uncovered just prior to the 30(b)(6) deposition of Emily Boss, in-house counsel for Georgia-Pacific.

documents were discovered on the last day of discovery. Finally, there can be no doubt but that Georgia-Pacific was in possession of the 160 page report dated February 2009 prior to the last day of discovery.

With respect to the matter at hand, the last minute production of an expert report in this proceeding is simply more of the same on behalf of Georgia-Pacific. The arguments presented in its moving paper are dishonest and disingenuous. They have ignored the critical date of March 25, 2010, and have attempted to both blame this Board for not resetting the expert disclosure period and to suggest that they were provided with only a limited 49-day fact discovery period for the new counterclaims. These arguments have not been made in good faith, and simply substantiate the type of conduct that Georgia-Pacific has demonstrated throughout this entire proceeding.

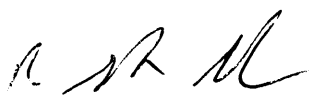
Thus, the fourth Pioneer factor weighs heavily against the finding of excusable neglect.

CONCLUSION

For the reasons set forth hereinabove, Georgia-Pacific has failed to satisfy the *Pioneer* test for demonstrating excusable neglect. Accordingly, Georgia-Pacific's request for Leave to Reopen the Time for Expert Disclosures and to Present Expert Testimony on Applicant's Counterclaims should be denied.

Dated: December 9, 2010

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, December 9, 2010, a copy of the foregoing APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO REOPEN TIME FOR EXPERT DISCLOSURES AND FOR LEAVE TO PRESENT EXPERT TESTIMONY ON APPLICANT'S COUNTERCLAIMS was served upon the Opposer, by email and by U.S. mail, to Opposer's current identified counsel, as set forth below:

R. Charles Henn, Jr., Esq.
Kilpatrick Stockton, LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309
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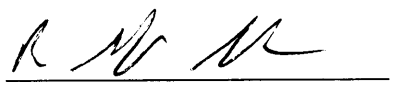

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EXHIBIT 1

2012-2

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November 18, 2010

Via Email and Overnight Mail

NOV 19 2010

R. Glenn Schroeder
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Re: *Georgia-Pacific Consumer Products, LP v. Global Tissue Group, Inc.*
Opposition No. 91184529

Dear Glenn:

Pursuant to Fed. R. Civ. P. 26(a), please be advised that Georgia-Pacific intends to rely on the expert testimony of Dr. Gerald Ford of Ford Bubala & Associates in this matter. Dr. Ford recently conducted a consumer survey evaluating the secondary meaning of Georgia-Pacific's QUILTED® mark. We expect to receive Dr. Ford's expert report tomorrow, and we will provide it to you immediately.

As you will recall, Global Tissue filed its counterclaims seeking cancellation of Georgia-Pacific's QUILTED registrations in April.[1] But, because Global Tissue filed a motion to compel the day after Georgia-Pacific filed its Answer to those counterclaims, proceedings immediately were suspended and the parties did not conduct counterclaim-related discovery. The suspension was not lifted until October, and at that point Georgia-Pacific worked diligently to identify an expert who could design and field a nationwide survey before the close of fact discovery. As noted above, Dr. Ford is now preparing an expert report summarizing that work and it should be in your hands no later than tomorrow.

In light of the current schedule, we recognize that it would be difficult for you to conduct Dr. Ford's deposition before the close of discovery. If you would like to take his

[1] The counterclaim was filed after the expert disclosure deadline, but when the Board reopened discovery relating to the counterclaim, it omitted a new expert deadline for reports relating to the counterclaim. Per the Board's rules, we intend to file a short motion to correct this oversight in the schedule and asking the Board for leave to submit the Ford survey report prior to the close of fact discovery.

deposition before November 24, we can accommodate that; but because we recognize that may be inconvenient in light of the Thanksgiving holiday, we also are willing to consent to a deposition of Dr. Ford outside the fact-discovery period during the weeks of November 29 or December 6. Please let us know when you would like to depose him.

Best regards.

Sincerely,

Charlene R. Marino

CRM/

cc: R. Charles Henn Jr.

EXHIBIT 2

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November 19, 2010
VIA E-MAIL

Charlene R. Marino, Esq.
Kilpatrick Stockton, LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309

Re: Georgia-Pacific Consumer Products, LP v. Global Tissue Group, Inc.
Opposition No. 91184529

Dear Charlene:

We are in receipt of your letter of November 18, 2010 discussing the usage of expert testimony in this proceeding, as well as Charlie's email this morning forwarding the expert report of Dr. Gerald Ford.

As you must know, the deadline for identifying experts in this proceeding expired a long time ago. We are, and have been, operating under the presumption that experts would not be part of this proceeding. The argument that the Board erred in not resetting the date for expert disclosures is not well taken. If, as you suggest, the Board should have reset the date for expert disclosures following the entry of our counterclaims, then Georgia-Pacific should have addressed that issue seven months ago upon receipt of the Board's Order of March 25, 2010.

As you note in your letter, it will be necessary for you to file a Motion with the Board requesting leave to introduce expert testimony. We intend to oppose such Motion. In the event the Board grants your Motion for entry of expert disclosures, we will at that time discuss a schedule for deposing Dr. Ford.

Very truly yours,

R. Glenn Schroeder

RGS:mak
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EXHIBIT 3

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November 19, 2010

NOV 23 2010

Via First Class Mail

Mr. R. Glenn Schroeder
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6900 Jericho Turnpike
Syosset, New York 11791-4407

Re: *Georgia-Pacific Consumer Products, LP v. Global Tissue Group, Inc.*
Opposition No. 91184529

Dear Mr. Schroeder:

Enclosed please find your service copy of *Opposer's Motion to Reopen Time for Expert Disclosures and For Leave to Present Expert Testimony on Applicant's Counterclaims.*

Best regards.

Sincerely,

Charlene R. Marino

Charlene R. Marino

CRM/

cc: R. Charles Henn Jr.

EXHIBIT 4

Schroeder, R. Glenn

From: Marino, Charlene [CMarino@kilpatrickstockton.com]
Sent: Wednesday, November 24, 2010 11:56 AM
To: Schroeder, R. Glenn
Cc: Henn, Charlie
Subject: GP v. GTG additional docs, Part 1
Attachments: GP 033748 - GP 033922 Part 1.pdf

Glenn,

Attached please find additional documents supplementing GP's production. Due to the file size, I will be sending them in three separate parts.

We are also sending via overnight mail cds containing a copy of Georgia-Pacific's document production in the TTAB matter against Kimberly-Clark.

I hope you have an enjoyable Thanksgiving holiday.

Regards,
Charlene

KILPATRICK STOCKTON LLP
Attorneys at Law

Charlene Marino
Kilpatrick Stockton LLP
Suite 2800 | 1100 Peachtree Street | Atlanta, GA 30309-4528
office 404 815 6386 | fax 4045414736
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Schroeder, R. Glenn

From: Marino, Charlene [CMarino@kilpatrickstockton.com]
Sent: Wednesday, November 24, 2010 11:57 AM
To: Schroeder, R. Glenn
Cc: Henn, Charlie
Subject: GP v. GTG additional docs, Part 2
Attachments: GP 033748 - GP 033922 Part 2.pdf

Part 2 attached.

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From: Marino, Charlene
Sent: Wednesday, November 24, 2010 11:56 AM
To: 'Schroeder, R. Glenn'
Cc: Henn, Charlie
Subject: GP v. GTG additional docs, Part 1

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Schroeder, R. Glenn

From: Marino, Charlene [CMarino@kilpatrickstockton.com]
Sent: Wednesday, November 24, 2010 11:58 AM
To: Schroeder, R. Glenn
Cc: Henn, Charlie
Subject: GP v. GTG additional docs, Part 3
Attachments: GP 033748 - GP 033922 Part 3.pdf

Part 3 attached.

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From: Marino, Charlene
Sent: Wednesday, November 24, 2010 11:56 AM
To: 'Schroeder, R. Glenn'
Cc: Henn, Charlie
Subject: GP v. GTG additional docs, Part 1

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Regards,
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EXHIBIT 5

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November 24, 2010

VIA FEDERAL EXPRESS

R. Glenn Schroeder
Hoffmann & Baron, LLP
6900 Jericho Turnpike
Syosset, New York 11791-4407

Re: *Georgia-Pacific Consumer Products, LP v. Global Tissue Group, Inc.*
Opposition No. 91184529

Dear Mr. Schroeder:

We are enclosing a CD of documents bates labeled GPTTAB 0000001 – GPTTAB 0029104. Please let me know if you have any questions or concerns.

Sincerely,

Eden G. Fesshazion
IP Litigation Case Assistant

Enclosure

EGF/

cc: Charlene Marino
Christine M. Cason
R. Charles Henn Jr.

EXHIBIT 6

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SENIOR COUNSEL
ROBERT NEUNER

SCIENTIFIC ADVISOR
DANIEL A. SCOLA, SR., Ph.D.

* NOT ADMITTED IN NY
† SENIOR ATTORNEY

December 2, 2010
VIA E-MAIL

Charlene R. Marino, Esq.
Kilpatrick Stockton, LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309

Re: Georgia-Pacific Consumer Products, LP v. Global Tissue Group, Inc.
Opposition No. 91184529

Dear Charlene:

We are in receipt of your emails of November 24, 2010 in which you forwarded additional Georgia-Pacific documents marked GP 033748 - GP 033922, and in which you advised us that you were forwarding CDs containing documents produced in the TTAB proceeding with Kimberly-Clark. On Monday, November 29, after the close of discovery, we received a hard copy of the documents attached to your email, as well as two CDs containing 29,000 of unindexed and uncategorized pages of additional documents.

As you know, discovery closed on November 24, 2010, the very same day you chose to forward to us two CDs containing over 29,000 pages of additional documents. It is difficult to comprehend exactly how G-P expects us to review and consider these additional documents at this point in the proceeding. We have no idea whether these new documents are merely copies of the documents already produced, or are in fact brand new documents which we have not yet seen and/or reviewed. There can be no doubt but that Georgia-Pacific has intentionally withheld this information from Global Tissue (despite our outstanding discovery requests dating back two years) until a point in time when it is no longer possible for Global Tissue to properly consider this new material.

This type of discovery abuse is not only outrageous, but is clearly in violation of both the TTAB rules and the Federal Rules of Civil Procedure. Global Tissue has already been forced to review over 32,000 pages of mostly irrelevant documents, and has already completed its discovery depositions in this proceeding. It would be extremely prejudicial

to Global Tissue if G-P is allowed to introduce 29,000 pages of additional documents into this proceeding after the close of discovery. In addition, it would be extremely unfair to allow G-P to benefit from intentionally violating the discovery rules.

Along these same lines, we note that the report attached to your email of November 24, 2010 beginning at GP 033748 is dated February 2009. Thus, this report did not just materialize in the last few days. It should have been produced as part of the original production of documents, but for whatever reason, Georgia-Pacific intentionally withheld this report from Global Tissue. If we are mistaken, and in fact this report was part of the original production, please advise and we will withdraw our objection to the report.

We intend to promptly file a Motion with the TTAB requesting that all of these recently-produced documents be excluded from this proceeding. We are available by telephone to discuss this further.

Very truly yours,

R. Glenn Schroeder

RGS:mak

345949_1.DOC

Kerrigan, Melinda

From: Kerrigan, Melinda
Sent: Thursday, December 02, 2010 5:13 PM
To: 'CMarino@KilpatrickStockton.com'
Cc: 'CHenn@KilpatrickStockton.com'
Subject: Georgia-Pacific Consumer Products, LP v. Global Tissue Group, Inc.

Attachments: Letter to Ms. Charlene Marino (dated 12.2.10).pdf

Letter to Ms. Charlene Marino ...

Please see attached letter.

Melinda A. Kerrigan
Administrative Assistant to R. Glenn Schroeder, Esq.
Hoffmann & Baron, LLP
6900 Jericho Turnpike
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EXHIBIT 7

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December 8, 2010

Via Email and U.S. Mail

Mr. R. Glenn Schroeder
Hoffmann & Baron, LLP
6900 Jericho Turnpike
Syosset, New York 11791-4407

Re: *Georgia-Pacific Consumer Products, LP v. Global Tissue Group, Inc.*
Opposition No. 91184529

Dear Glenn:

This responds to your December 2 letter.

As you know, both parties in this proceeding made their initial document productions quite some time ago and have made smaller productions as materials have come to light over the course of discovery. This is not unusual, as Federal Rule of Civil Procedure 26(e) requires parties to supplement discovery responses "in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect." *See also* T.B.M.P. § 408.03 (stating that Rule 26(e)'s obligation to supplement discovery responses applies to Board proceedings). Our latest document production -- which occurred within the discovery period -- was provided as a supplement pursuant to this Rule.

As you also know, Georgia-Pacific is involved in a cancellation proceeding with Kimberly-Clark that relates to the QUILTED® family of marks. Discovery in that proceeding opened in July, and after the parties exchanged written discovery, the parties collected and produced responsive documents in October and early November. As I explained in my November 24 email, the two CDs we produced to Global Tissue Group ("GTG") contain a copy of Georgia-Pacific's recent document production in the Kimberly-Clark proceeding. Entirely consistent with Fed. R. Civ. P. 26(e), these documents were produced to GTG "in a timely manner" following our production to Kimberly-Clark.

Georgia-Pacific produced these materials in an overabundance of caution and to comply with Rule 26(e). Because the documents were gathered from many of the same custodians, using similar search terms used in the collection of Georgia-Pacific's initial document production to GTG, we expect many of the documents may be duplicative of those already produced. But, we produced the entire production because the documents relate to the Kimberly-Clark proceeding and thus are directly responsive to GTG's Document Request No. 22.

With respect to the February 2009 report (GP 033748), Georgia-Pacific only recently discovered (in connection with the document production in the Kimberly-Clark matter) that this report inadvertently was excluded from its initial production to GTG. Once that became clear, Georgia-Pacific timely included the report as part of its supplemental production pursuant to Fed. R. Civ. P. 26(e).

Your claim—without citation to any authority—that GP "intentionally violat[ed] discovery rules" by producing responsive documents within the discovery period is misplaced, and is explicitly contradicted by Rule 26(e), which places no time limitation on a party's duty to supplement. The Board has made clear that "discovery responses may be supplemented at any time, even during trial." *Vignette Corp. v. Marino*, 77 U.S.P.Q.2d 1408, 1412 (T.T.A.B. 2005) (refusing to exclude documents not produced in discovery and disclosed for the first time as exhibits to an affidavit in response to a summary judgment motion); *see also H.D. Lee Co. v. Dragon Sourcing*, No. 91180251, 2010 WL 1791180, at *2 (T.T.A.B. Apr. 20, 2010) (overruling objection to admission of exhibit at trial not produced during discovery). Georgia-Pacific's supplemental production is appropriate and was made in a timely fashion; there are no grounds upon which GTG can properly move to exclude them.

Any motion by Global Tissue to exclude these documents would be without any legitimate legal basis, and would only serve to further delay this proceeding. We request that Global Tissue reconsider its decision in light of the foregoing explanation.

Sincerely,

Charlene R. Marino

Charlene R. Marino

cc: R. Charles Henn Jr.